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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Petition for Rulemaking	)	RM-8643
of Pacific Bell Mobile Services	)	
Regarding a Plan for Sharing	)	
the Costs of Microwave Relocation	)	

COMMENTS OF THE SPRINT TELECOMMUNICATIONS VENTURE

The Sprint Telecommunications Venture[1] ("the Sprint Venture") hereby respectfully submits its comments on the Pacific Bell Mobile Services ("PBMS") petition for a rulemaking regarding the sharing of microwave relocation costs.[2] The Sprint Venture's wireless business unit was created in October 1994 and was not in existence when the initial rulemaking dealing with incumbent microwave relocation issues was decided. Thus, these comments constitute the Sprint Venture's initial filing on microwave relocation issues.

The Sprint Venture supports a rulemaking proceeding that will not only establish reasonable microwave relocation cost sharing provisions, but will also reform the voluntary negotiation period, minimize unjust enrichment by incumbent microwave system operators and hasten the deployment of PCS systems. To this end, the Sprint Venture supports much of the

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[1] The wireless component of the Sprint Telecommunications Venture consists of WirelessCo, L.P. WirelessCo, L.P. is limited partnership organized under Delaware law. The ultimate owners of the Sprint Telecommunications Venture and WirelessCo, L.P. are Sprint Corporation, Tele-Communications, Inc., Cox Enterprises, Inc., and Comcast Corporation. WirelessCo, L.P. is the auction winner for multiple MTA broadband PCS licenses.

[2] FCC Public Notice, Report No. 2073, May 16, 1995.

microwave relocation cost sharing plan proposed by PBMS, but asserts that the scope of the rulemaking must be expanded to address additional related issues and that some of the PBMS proposals must be changed.

I. PBMS Cost Sharing Plan

PBMS proposes to create interference rights that are separate from microwave transmission rights. Section 94.53 of the Commission's Rules sets forth the basic interference criteria and creates a non-interference obligation. The PBMS plan transfers the non-interference right from the current microwave transmission license holder to the PCS provider that relocates the microwave link. While actual interference would no longer be possible due to relocation of the link, the PCS provider would hold rights as though the link were still operational.

PBMS proposes that any PCS provider beginning service would compensate a PCS provider that funded relocation of a link if harmful interference would have been caused by the operations of the PCS entrant. Interference would be determined by TIA Telecommunications Systems Bulletin 10-F. A formula for sharing relocation costs among multiple interfering PCS providers is proposed and the formula recognizes that the initial relocation expense should be depreciated over time to reflect differences in timing between system turn up by various PCS providers.

Some incumbent 2 Ghz microwave users have regional systems, as PBMS notes. PBMS notes that in some circumstances, a PCS provider may agree to relocate portions of a regional system outside of the PCS provider's licensed area in order to obtain agreement from the incumbent to relocate interfering links within the licensed PCS area in a commercially reasonable time frame. For those links relocated outside of the licensed PCS area, PBMS proposes 100

percent reimbursement by the first interfering PCS provider to turn up service in the area. That provider would then own the interference rights and the right to cost sharing by other PCS providers. A per link cap of $600,000 is proposed by PBMS.

PBMS asserts that its plan will cure the free rider problem--the second PCS system to become operational does not pay for relocation if the first has already relocated interfering links.

II. Cost Sharing of Relocation Expenses Should Occur

The Sprint Venture supports the concept of Commission mandated cost sharing. PCIA, in its comments on the PBMS plan, proposes that only co-channel links be subject to a mandatory cost sharing plan. Further, PCIA proposes a cap of $250,000 for general relocation costs plus an additional $150,000 if a tower must be constructed in the link relocation process. The Sprint Venture concurs in these PCIA proposed changes to the PBMS microwave relocation cost sharing plan.

PBMS initially proposed to spread relocation expenses among not only those PCS providers that operate in the same frequency bands as microwave licensees, but also among PCS providers in adjacent bands if interference is a possibility. The Sprint Venture does not support an adjacent band interference cost sharing methodology. In the Sprint Venture's view, adjacent channel problems will likely be evenly distributed among PCS providers and the relocation cost sharing process may be simplified by focusing only on the actual licensed frequency holders and not on adjacent frequency users. While PBMS initially claimed that this could give adjacent frequency holders a free benefit, the Sprint Venture believes such benefits, after summing the positives and negatives on each PCS provider's account, would be minimal and capture of these

adjacent channel benefits would not be worth the additional effort involved in tracking and cost sharing.

The Sprint Venture further asserts that the PBMS proposal that $600,000 be the per link relocation cost cap is excessive. In its place, a cap of $250,000 per link in general relocation costs is more reasonable and approximates actual expected costs. In those cases where tower construction must occur in link relocation, an additional $150,000 may appropriately added to the cap on presumed reasonable relocation costs.

III. Short Comings of Voluntary Negotiation

In its initial experience dealing with incumbent microwave licensees, the Sprint Venture has encountered significant reluctance by some incumbents to relocate unless, in some cases, entire regional systems are relocated or significant capability upgrades are provided. Held over the head of PCS providers is the threat that incumbents are prepared to wait out PCS providers through a three or four year negotiating window and force Commission action unless the incumbents receive unreasonable system upgrades from PCS providers. These upgrades include relocation of non-interfering links, relocation of links outside the PCS provider's licensed area, or significant system improvements in the form of increased capacity, capabilities, and digital transmission functionality.

Some incumbents believe they can exact this tribute because PCS providers would otherwise be forced to sit on their spectrum auction investment or install incomplete systems while the voluntary negotiation clock slowly runs its course.

The Sprint Venture believes the voluntary negotiation system is subject to significant abuse opportunities and that the Commission's plan to compensate incumbents for "comparable

system" relocation is being ignored. Consultants to incumbent microwave users have urged them to hold out for free upgrades rather than relocate for only a comparable system on interfering links. Clearly the Commission cannot countenance this unjust enrichment and abuse of the relocation process.

If the Commission does not address this problem, it will inadvertently foster anti-competitive consequences. PCS providers, expecting microwave incumbents to accept comparable facilities with similar "system reliability, capability, speed, bandwidth, throughput, overall efficiency, . . . and interference protection"[3] valued the bid upon spectrum accordingly. To the extent that bidders assumed reasonable relocation costs in their spectrum valuation, if the Commission unwittingly fosters excessive relocation expenses, these actions will devalue the A and B Band spectrum not only to the detriment of those who have bid in this A and B Band auction, but will have also send a signal to future bidders to reduce their bids to factor in inappropriate and unconscionable microwave relocation costs.

Further, if PCS bidders are forced to pay more than reasonable microwave relocation costs, they might become "cash strapped" and might be forced to delay construction of some PCS systems. Such delays would allow the dominant cellular carriers to further expand their market penetration and skew competitive success in favor of cellular incumbents.

To solve this problem, the Sprint Venture proposes that the Commission shorten the voluntary negotiation period available to all but public safety entities. For non-public safety entities, the voluntary negotiation period should be shortened to six months followed by a one year mandatory negotiation period. The negotiation periods should begin once an incumbent

[3] Third Report and Order at ¶ 36.

receives notice that a PCS provider seeks relocation of an interfering link. In this context, the Commission should make it very clear that unnecessary delay and expense will not be countenanced.

An industry supported clearinghouse with authority, such as one proposed by PCIA, should be empowered to facilitate incumbent relocation and review disagreements concerning comparable systems parameters and claims that certain expenses constitute significant, unjustified system upgrades. To minimize disputes that might require Commission action, alternative dispute resolution may be reasonably required if incumbent microwave users and PCS licensees do not accept the recommended comparable system decision of the clearinghouse.

Microwave incumbents have done nothing that justifies free system upgrades to non-comparable technology or the change out of entire systems when only portions of the system would potentially cause interference with PCS operations. For example, an incumbent microwave user might have a regional analog microwave system crossing several MTA boundaries with only a portion of the links causing potential PCS interference. An upgrade to digital on one of the links may cause a need to change the control system for the microwave network to recognize the presence of both digital and analog links. Thus, the incumbent microwave user may seek to simplify control system design by upgrading the entire system to digital. However, in the first instance, the conflicting link might easily be served by a 6 Ghz analog system that is capable of providing similar reliability and throughput, thus not justifying upgrade to digital under the comparable system standard. Under these circumstances, the conversion of the first link to digital is a system improvement as is the conversion to digital of all the non-interfering links. These significant upgrades should not be funded by PCS providers. The Commission should suppress

any expectation that incumbent microwave users may obtain unjust enrichment from the relocation process.

Under circumstances where non-public safety incumbents have three years to negotiate relocation before the Commission will even review relocation disputes, incumbents possess the power to exact such unreasonable improvements and unjust enrichment. In order to speed the roll-out of PCS service and remove an incentive for the incumbents to bargain in bad faith, the voluntary negotiation period should be significantly shortened to six months. A mandatory negotiation period of one year should remain. This revised negotiation period would significantly reduce the ability of incumbents to bargain in bad faith concerning microwave relocation timing and comparable system design.

IV. CONCLUSION

The PCIA co-channel cost sharing and $250,000/general plus $150,000/tower cap proposals should be accepted as modifications to the PBMS plan, as described above. Further, the Commission should modify the voluntary microwave negotiation period to recognize a six month voluntary period for non-public safety users, followed by a one year mandatory negotiation period. The negotiation period should begin when a PCS provider gives notice it desires to begin relocation negotiations. The Commission must remove any incentives that incumbent microwave

users have to abuse the negotiation process through demands that significant microwave system upgrades over and above those included in reasonably comparable systems be funded by PCS providers.

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